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No. 320

IN THE

Supreme Court of the United States

October Term, 1956

MORRIS F. LUFF and RUTH K. LUFF,
Petitioners,

v.

WILLARD J. LUFF and JOHN W. SLACKS,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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INDEX TO PETITION

	PAGE
Conclusion	10
Constitutional Provisions Involved	3
Effect of Partial Summary Judgment	9
Judgment Below is Arbitrary and Capricious	9, 10
Jurisdictional Statement	2
Opinion Below	1, 2
Questions Presented	3
Reasons for Granting the Writ	6-10
Statement of the Case	3-6

Table of Cases

Am. Ry. Exp. Co. v. Kentucky, 273 U. S. 269, 47 S. Ct. 353, 71 L. Ed. 639, 641	10
Booth v. Illinois, 184 U. S. 425, 429, 46 L. Ed. 623, 626, 22 S. Ct. 425	10
Pennoyer v. Neff, 95 U. S. 714, 733, 24 L. Ed. 565, 572	10
Roberts v. New York, 295 U. S. 264, 79 L. Ed. 1429, 1435, 55 S. Ct. 689	10
Simon v. Craft, 182 U. S. 427, 436, 21 S. Ct. 836, 45 L. Ed. 1165	8
Truax v. Corrigan, 257 U. S. 312, 332, 42 S. Ct. 124, 66 L. Ed., 254, 261	6, 10

Other Authorities

Constitution of the United States, Amendments V, VII and XIV	3
Corpus Juris, Vol. 12, p. 1196, Sec. 961	6
Journal of American Judicature Society, article by Truman Rucker	8
Manual to the Constitution of the United States by Peirce and Cook, pp. 106, 107, 133	7
Private Act No. 495, 83rd Cong., Approved June 30, 1954	4, 5
Truman Rucker—in Journal of the American Judicature Society	8
U. S. Code, Title 28, Sec. 1254	3

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Morris F. Luff and Ruth K. Luff respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above captioned case on May 17, 1956, affirming the decision of the United States District Court for the District of Columbia granting a motion for partial summary judgment declaring that Willard J. Luff, John W. Slacks and Morris F. Luff are the members of the Willmore Engineering Company, a partnership, for whose relief Private Laws Nos. 495 and 501, 83rd Congress, 2nd Session, were enacted.

OPINION BELOW

The United States District Court for the District of Columbia, where this action originated, on August 29,

1955, entered a judgment, without a trial, granting a motion by Willard J. Luff and John W. Slacks, plaintiffs in said District Court, for partial summary judgment, "declaring that Willard J. Luff, John W. Slacks and Morris F. Luff are the members of the Willmore Engineering Company for whose relief Private Laws No. 495 and 501, 83rd Congress, 2nd Session were enacted." On an appeal prosecuted by petitioners, the United States Court of Appeals for the District of Columbia Circuit, in an opinion dated May 17, 1956, held that the partial summary judgment "was correctly entered", and that it was affirmed. (R. 167-169)

Thereafter, these petitioners filed a timely motion for rehearing in banc, which was denied on June 8, 1956 (R. 175).

These petitioners were named as defendants in the complaint filed in the District Court, and were charged with fraud, deceit, connivance, and conspiracy to defraud, but were denied a trial of such charges by the Court, although they vigorously demanded an opportunity to disprove such false charges by competent evidence. (R. 1-17, App., infra, 1A-19A; R. 47-54, App., infra, 22A-31A)

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the District of Columbia Circuit affirming the judgment below which granted a motion for partial summary judgment without a trial was entered on May 17, 1956. It is not yet officially reported (R. 167-160)

The jurisdiction of this Court is invoked under Title 28, United States Code, Sec. 1254.

QUESTIONS PRESENTED

1. The Constitutional rights of petitioners to a trial of the issues of fact involved were denied by the granting of a partial summary judgment, contrary to the Seventh Amendment to the Constitution.

2. Petitioners were denied due process of law, contrary to the provisions of the Fifth and Fourteenth Amendments to the Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution, in pertinent parts, provides:

> "No person shall be * * * deprived of life, liberty, or property, without due process of law * * *" (Amendment V)

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law" (Amendment VII)

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *" (Amendment XIV)

STATEMENT OF THE CASE

In 1943, Morris F. Luff and Willard J. Luff orally established an informal partnership at will, known as Willmore Engineering Company, with headquarters in Washington, District of Columbia, for the performance of technical engineering, management and supervisory services relating to the production of power driven cargo winches for sea going vessels operated in the prosecution of World War II by and on behalf of the United States

Maritime Commission. The capital necessary to enable the partnership to begin business was supplied by petitioner Morris F. Luff, and has never been repaid to him. (R. 150, 152; App., infra, 49A-51A)

About April 1, 1944, John W. Slacks became associated with the partnership, having contributed $500.00 to the firm, which was repaid to him in full. (R. 47, 150, 151; App., infra, 49A) His active connection with the firm was terminated in 1945 by his voluntary withdrawal (R. 47, 151; App., 49A) His entire relationship to the partnership was terminated about May 15, 1948, after repayment of his contribution to the firm's capital and payment of full compensation for his services (R. 47, 151, 152, 153; App. 49A-52A) Thereafter he took no part in the firm's business and affairs (R. 151, 152, 153; App. 49A-51A) The firm became inactive and was dissolved in 1945. Its only asset was a denied and disputed claim against the United States Maritime Commission (R. 2, 3, 48; App. 24A)

About October 1, 1949, Willard J. Luff obtained employment in Pennsylvania, left Washington, District of Columbia, abandoned the partnership, and ever since has continued in his employment in Pennsylvania (R. 153, 155; App. 52A, 53A)

Following the withdrawal from and abandonment of the partnership by Willard J. Luff in 1949, the partnership became finally dissolved and terminated. Thereupon, Morris F. Luff and his wife, Ruth K. Luff, entered into an informal partnership arrangement, and, at their own expense and without the assistance of Willard J. Luff or John W. Slacks, succeeded, after five years of effort, in securing enactment by Congress of Private Laws Nos. 495 and 501, 83rd Congress, 2nd Session. Private Law No. 495 provides

> "That the Secretary of Commerce and Willmore Engineering Company each shall appoint an arbi-

trator, and they together shall appoint a third arbitrator, these three to serve as a Board of Arbitrators who shall, after having heard the evidence, determine and certify to the Secretary of the Treasury any amount which in their judgment would be required to satisfy any obligations of the United States to the Willmore Engineering Company for services and expenses in connection with its contract and the breach of it, if any, with the United States for production of winches for transport vessels necessary to the prosecution of World War II, pursuant to special emergency authorizations and commitments under war powers, for which it is alleged the United States has failed to provide adequate payment. To the extent not inconsistent with this Act, the provisions of Title 9 of the United States Code shall be applicable to proceedings under this Act. Any cost arising in the arbitration of these claims shall be fixed by the arbitrators and assessed equally between the Government and the claimants." (Approved June 30, 1954) (R. 6; App. 6A, 7A)

The arbitrators appointed, without determining who constituted the partnership known as Willmore Engineering Company, made a purported award of a total of $375,577.37 "which shall be in full settlement of all claims of the said Willmore Engineering Company against the United States" (R. 34-36) The amount of the purported award has been paid into the Registry of the United States District Court for the District of Columbia.

The complaint and answer filed in the District Court established issues of fact to be resolved before a judgment as to who constituted the partnership at the time of enactment of the relief legislation properly might be entered, as follows:

(1) Did John W. Slacks finally and completely withdraw from the partnership in 1948?

(2) Did Willard J. Luff abandon and finally withdraw from the partnership on or about October 1, 1949?

(3) Did Morris F. Luff and Ruth K. Luff form a new partnership and continue the use of the name of Willmore Engineering Company beginning about October 1, 1949?

(4) Did Morris F. Luff and Ruth K. Luff, at their expense and without assistance from Willard J. Luff or John W. Slacks bring about enactment of the private relief legislation involved in this proceeding?

(5) Who owned the claim of Willmore Engineering Company after final dissolution of the original partnership?

(6) Who constituted the Willmore Engineering Company for whom Congress enacted the private relief legislation?

Proper resolution of these issues required the production of evidence. They are not conclusions of law. The trial court granted judgment without a trial and without evidence.

REASONS FOR GRANTING THE WRIT

Denial of Trial Improper

The Constitutional guarantees of due process of law extend to judicial proceedings (12 C. J., 1196, Sec. 961, and cases cited, including numerous decisions of this Honorable Court)

In Truax v. Corrigan, 257 U. S. 312, 332, 42 S. Ct. 124, 66 L. Ed., 254, this Court, among other things, said:

> "* * * The due process clause, brought down from Magna Charta, was found in the early state constitions, and later in the Fifth Amendment to the Federal Constitution as a limitation upon the executive, legislative and judicial powers of the Federal Government * * *
>
> "The due process clause requires that every man shall have the protection of his day in court, and the

benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously but upon inquiry, and *renders judgment only after trial,* so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. * * *" (Emphasis added)

"There is no question but that citizens require protection against the judiciary as well as against the legislature * * *. Every man is entitled to his day in court, and equal opportunity must be given him to prosecute or defend * * *" (Manual to the Constitution of the United States by J. Leonard Peirce and Harry Clayton Cook, pp. 106, 107)

Those fundamental principles apply to civil as well as criminal judicial proceedings. Denial of the right to produce evidence on issues of fact is a denial of due process. That is what occurred in this case.

Petitioners stood ready to prove by competent evidence that the original partnership known as Willmore Engineering Company became completely dissolved and ceased to exist in 1949; that Willard J. Luff and John W. Slacks completely abandoned and deserted the partnership; that petitioners formed a new partnership, and, after years of hard work, made a thing of value out of a claim that was worthless and so considered by said Willard J. Luff and John W. Slacks when the partnership was dissolved, and that the Willmore Engineering Company for whose relief the private legislation was enacted were petitioners and not the three partners mentioned in the court's judgment. This is borne out forcibly and clearly by the affidavit of Lawrence B. Slater, duly filed in the record. (R. 96-98; App. 39A-42A). By the partial summary judgment, the courts below have denied these petitioners their Constitutional right to have a "judgment only after trial."

That the summary judgment procedure is overworked and abused by the courts in their efforts to clear congested dockets is generally known among lawyers. This is true of the pre-trial procedures in the Federal Courts. Few lawyers, however, have seen fit to voice their dissatisfaction and concern. One of those who has spoken is Truman Rucker, who, writing in the Journal of the American Judicature Society for October, 1954, on the subject of pre-trials, which, likewise are used to dispose of cases without formal trials, voiced opinions applicable alike to the summary judgment procedure when he said:

> "The very bulwark of the American system of life is based upon trials by juries and judges, but if the system that we have is not going to seek the truth in an expeditious manner, then litigants of all types * * * will force the legislators of this country to furnish some type of bureau to adjudicate their differences."

"One of the most cherished features of common law procedure, as colonists understood it, was the right of trial by jury." (Peirce and Cook, supra, p. 133)

This Court, in Simon v. Craft, 182 U. S. 427, 436, 21 S. Ct. 836, 45 L. Ed. 1165, said:

> "The essential elements of due process of law are notice and opportunity to defend. * * *"

An opportunity to defend is not afforded where the court renders judgment on an issue of fact without giving a litigant the right to produce evidence on such issue. In this case, by the partial summary judgment, petitioners were denied the opportunity and right to produce evidence on material questions of fact—they were denied the right to defend allegations that they were not the owners of the claim against the Government at the time the private relief legislation was enacted—they were denied the right to defend serious accusations made against

them touching their honesty and integrity—they were denied the right to produce evidence of the abandonment of all interest in the partnership by Willard J. Luff and John W. Slacks—they were denied the right to produce evidence that after abandonment and surrender of all right to the claim against the Government by Willard J. Luff and John W. Slacks petitioners took that worthless claim and by their own efforts and at their own expense made something of value of it. Petitioners have not had their day in court and the granting of the partial summary judgment without a trial violates their Constitutional rights.

Effect of Partial Summary Judgment

It is axiomatic that a partnership as between the partners can be created only by agreement. The complaint admitted that the partnership established in 1943 became dissolved about August of 1945 (R. 3; App. 3A)

By the summary judgment, the court below, without a trial or the production of evidence, created a partnership consisting of the former partners some nine years after dissolution, contrary to the wishes of at least one former partner and without any new agreement that he or the other two would be partners. Petitioner Morris F. Luff, therefore, has been forced against his will to be a partner with the two plaintiffs below who have charged him with fraud and conspiracy, and who refuse to confront him in open court so that he may refute and disprove those charges. By judicial selection, Morris F. Luff is a partner with two persons in whom he lacks all confidence and trust and with whom he has no desire to be associated in any manner whatever. How, then, can that be due process of law?

Judgment Below is Arbitrary and Capricious

While the Constitution does not guarantee that a trial shall be entirely free from error, a gross and obvious

error "coming close to the boundary of arbitrary action" renders a judicial proceeding void as violative of the Constitutional right of due process.

Roberts v. New York, 295 U.S. 264, 79 L. Ed. 1429, 1435, 55 S. Ct. 689.

Where the judgment, as in this case, amounts to an arbitrary and capricious exercise of judicial power without a trial and "is in clear conflict with these fundamental 'principles' which have been established in our system of jurisprudence for the protection and enforcement of private rights", the litigant has been denied due process, contrary to the Constitutional guaranty.

Am. Ry. Exp. Co. v. Kentucky, 273 U.S. 269, 47 S. Ct. 353, 71 L. Ed. 639, 641, citing Pennoyer v. Neff, 95 U.S. 714, 733, 24 L. Ed. 565, 572; Booth v. Illinois, 184 U.S. 425, 429, 46 L. Ed. 623, 626, 22 S. Ct. 425, and Truax v. Corrigan, 257 U.S. 312, 329, 66 L. Ed. 254, 261, 27 ALR 375, 42 S. Ct. 124.

CONCLUSION

For the foregoing reasons, petitioners respectfully submit that this petition for certiorari should be granted, and the case remanded to the trial court with directions to grant petitioners the right of trial on the issues of fact set forth above herein.

Respectfully submitted,

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INDEX TO APPENDIX

	PAGE
Affidavit of Lawrence B. Slater	39 A
Affidavit of Morris F. Luff	35 A
Answer of Defendants, Morris F. Luff and Ruth K. Luff, to Complaint	22 A
Complaint filed in United States District Court for District of Columbia	1 A
Findings of the Arbitrator, Eugene D. Hegarty	45 A
Joint and Several Answer of Defendants, Morris F. Luff and Ruth K. Luff, to Complaint	22 A
Letter, February 2, 1954, from Hon. Frank Small, Jr., to Edward B. Bowers, Legislative Analyst, Bureau of the Budget	20 A
Letter, August 4, 1954, R. Sidney Johnson and J. Richard Earle to Eugene D. Hegarty, arbitrator	32 A
Order Granting Summary Judgment for Plaintiffs	43 A